HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 11719 OF 2006

DATED: 15.6.2006

Between:

Smt. Kasula Manjula

… Petitioner

and

The Deputy Commissioner of Endowments,

Warangal and others and others

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.11719 OF 2006

ORAL ORDER:

The Manager of the 3rd respondent-Devasthanam has issued the impugned notice dated 24.5.2006 to the petitioner stating that the petitioner had encroached upon the land belonging to the 3rd respondent-Devasthanam in an extent of 384.25 sq.yards in Sy.No.1399/1 in Korutla town and mandal, Karimnagar District and constructed a house in the property; that the construction is contrary to the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') and that the petitioner should within 15 days from the date of the notice remove the illegal construction and vacate the premises, failing which action would be initiated against him under the provisions of the Act.

The petitioner states that the Manager of the 3rd respondent-Devasthanam is not the competent authority to initiate eviction proceedings against encroachers under the provisions of Section 83 of the Act and that it is only the Assistant Commissioner having jurisdiction who has the power, authority and jurisdiction to do so. The petitioner seeks invalidation of the impugned order.

The fundamental premise underlying the writ petition is misconceived. The impugned notice issued by the Manager of the 3rd respondent-Devasthanam is not a notice proposing action under Section 83 of the Act. The Manager of the 3rd respondent-Devasthanam has merely sensitized the petitioner that in the perception of the 3rd respondent-Devasthanam the petitioner is an encroacher and if he does not voluntarily evict himself from the encroached premises, action under the provisions of the Act would be taken.

It is a settled principle that all executive action must be prima facie

construed as legitimate and that an interpretation as would conduce the legitimacy of an executive instrument should be preferred to a contrary interpretation. Applying this principle, what all the impugned order signifies is that should the petitioner fail to vacate the premises allegedly encroached upon by him and belonging to the 3rd respondent-Devasthanam, the Manager of the 3rd respondent-Devasthanam will send up a report or otherwise generate action in accordance with Section 83 of the Act. There is no justification to assume that the Manager of the 3rd respondent-Devasthanam is himself initiating action under Section 83 of the Act and to strike down the notice on such extravagant interpretation of an instrument which does not bear such signification.

Another contention urged by the petitioner is that the 3rd respondent-Devasthanam by its Manager would forcibly evict the petitioner from the premises. There is on record no material to permit a conclusion that the 3rd respondent would so act. If the petitioner is threatened with any forcible or illegal dispossession by any individual including the Manager of the 3rd respondent-Devasthanam, the petitioner has a plenitude and plurality of remedies available. He could resist such illegal action of any individual including a person holding public office but acting without the authority of law, by way of private defence by using countervailing and necessary level of force to resist illegal conduct; he could complain to the police authorities giving them information about the commission of a cognizable offence in which event the police would be bound to register the complaint and initiate appropriate investigation and remedial measures, or the petitioner could approach the civil court of competent jurisdiction for injunctive relief. There is no justification for what is now a mere apprehension, to be considered under Art.226 of the Constitution of India, particularly when adequate remedies including judicial remedies are available nearer home to the petitioner and within greater

proximity.

On the aforesaid analysis, there are no merits. The writ petition is dismissed. No order as to costs.

GODA RAGHURAM, J

Date: 15.6.2006

Note: CC as soon as possible

B/o cvm